BRIEF FOR PETITIONER

The facts, the jurisdiction, the questions presented, the statement, the specifications of errors to be argued, and the reasons for granting the writ are fully set out in the foregoing petition and will not be repeated here but will be referred to.

The brief of this petition in the Circuit Court of Appeals is filed herewith as Appendix "B" for fuller discussion of the issues with more extended quotations and citations.

Point I

The factory inspection section of the Food Act (Section 704; 21 U. S. C. A. 74) does not authorize an inspection of the shipping or other records of the manufacturer or shipper and if said section is so construed as to authorize the same, it is unconstitutional and invalid.

Inspection of all government records is made available to the Food Administrator by 21 U. S. C. A. 372 (c). It clearly does not give authority to search the manufacturer's record. This section and the two following sections are quoted in Appendix "B" of this petition (page 6).

Similarly Section 703 of the Food Act 21 U. S. C. A. 373 gives authority for the inspection of the records of interstate carriers but it does not give authority for inspection of manufacturers and shippers.

The Senate Report 5 of the 74th Congress referring to Section 14 of the bill which became Section 703 of the act said:

> "Section 14 would authorize officers and employees duly designated by the Secretary of Agriculture to inspect and copy the records of *shippers, dealers, and interstate carriers,* pertaining to the shipment or sale of food, drugs or cosmetics in interstate commerce.

> This is another implementing provision necessary for effective enforcement since proof of interstate shipment without such records is frequently impossible."

It will be noted that Congress left out of the Act the words "shippers" and "dealers" most likely because of the Boyd decision, but the Government is now asking the Court by construction to legislate and put the words back into the Act. Such a construction would make the act unconstitutional.

The putting of the words "shippers" and "dealers" in the carrier record section 21 U. S. C. A. 373 indicates clearly that the proponents of the bill did not expect the factory section 21 U. S. C. A. 374 to give the Government authority to inspect the records of the shippers and dealers.

Other quotations from the Congressional Reports are found at page 18 of Appendix "B".

The Factory Inspection Section of the Act (Appendix "B" page 6) provides only for a physical inspection of the plant and the lower court's construction of it to the effect that it authorized an inspection of the manufacturer's shipping records is clearly against all rules of construction.

These reports make it clear that the Congress never intended by this Section 704 of the Food Act to authorize an inspection of a manufacturer's records.

Such a construction of the section would make it unconstitutional under the Boyd decision.

As Section 373 names the inspection of carrier's records and does not name claimant's records, it clearly excludes claimant's records under the well-known principle that naming one excludes the other. On the same principle, Section 374 by naming factory inspection and not naming record inspection excludes record inspection. (21 U. S. C. A. 373, 374)

If either section provided for inspection of the claimant's record, it would clearly be unconstitutional under the *Boyd* and *Lees* cases above.

Judge Coleman was absolutely right in holding that neither section authorized inspection of the claimant's records and that they should be so construed as to limit Government inspection to the inspection of carrier's records.

An unconstitutional search cannot be made valid by a statute. *Nathanson* case, 290 U. S. at 46; 78 L. Ed. 159 at 161. The statutes must be liberally construed to preserve the constitutional rights and prevent the impairment of the protection extended. *Grau* case 287 U. S. 124 and 128; 77 L. Ed. 212 at 215. (These cases are quoted at page 20 and 21 of Appendix "B").

Point II

Evidence obtained by illegal searches and seizures or enforced testimony contrary to the 4th and 5th Amendments of the Constitution can not be used in libels for condemnation under the Food Act 21 U. S. C. A. 14.

The Court of Appeals held that the *Boyd* case was not applicable as "that case involved the unconstitutional demand for the production of records in a criminal proceeding" (R. 36).

The Court also held and stated "we are not here dealing with criminal prosecution within the 4th Amendment to the Constitution" (R. 36), thus conflicting with the *Boyd* case and the *Lees* case.

Careful examination and comparison of the complaint or information in the *Boyd* case (App. "A", page 1) with the libels in the present action R. 1), and the statutes in the *Boyd* case (App. "A," pages 3, 4) with the Food Act (App. "A", pages 5, 8), it is apparent that the present case is one "on all fours" with the decision in the *Boyd* case.

The complaint which Judge Bradley called and "information" in the *Boyd* case was not given any name by the United States Attorney who signed it, the late distinguished Elihu Root, but in line 3 and 5 he states he comes "to prosecute a civil action".

The information only prayed the forfeiture of the merchandise under Section 12 of the Boyd Act and did not call for any criminal punishment, fine or penalty (App. "A", page 2 bot.)

The judgment of the Court (App. page 3) condemned the said merchandise and ordered its sale (App. "A" page 3). There was no fine or imprisonment imposed. Section 12 of the act (App. "A" page 4) provides for criminal prosecution and punishment.

The Food Act 21 U. S. C. A. 1 and 2 (App. "A" page 7) provides for criminal penalties, imprisonment as in the *Boyd* case and the Food Act 21 U. S. C. A. 14 (App. "A" page 5) provides for a libel like the present case and condemnation of the merchandise without any infliction of criminal punishment.

The various applicable sections of the Food Act and others with some bearing are set forth in App. "B" pages 30 and 31.

In the *Boyd* Case 116 U. S. 616 at 630; 29 L. Ed. 746 at 751, the Court held in the opinion as follows:

> "1. The fifth section of the act of June 22, 1874, entitled 'An Act to Amend the Customs Revenue Laws' etc. which section authorizes a court of the United States, in revenue cases, on motion of the government attorney, to require the defendant or claimant to produce in court his private books, invoices and papers, or else the allegations of the attorney to be taken as confessed, *held to be unconstitutional and void as applied to suits* for penalties, *or to establish a forfeiture*

of the *party's goods*, as being *repugnant* to the *Fourth* and *Fifth Amendments* of the Constitution.

2. Where proceedings were *in rem* to establish a forfeiture of certain goods alleged to have been fraudulently imported without paying the duties thereon, pursuant to the 12th section of said Act, held that an order of the court made under said 5th section, requiring the claimants of the goods to produce a certain invoice in court for the inspection of the government attorney, and to be offered in evidence, were erroneous and unconstitutional proceedings."

* * * * * * *

"5. *A proceeding to forfeit a person's goods for an offense against the laws*, though *civil in form*, and whether *in rem or in personam, is a criminal case within* the meaning of that part of the *Fifth Amendment* which declares that no person 'shall be compelled, in any criminal case, to be a witness against himself.' "

Mr. Justice Bradley said:

"As, *therefore suits for penalties and forfeitures*, incurred by the commission of offenses against the law, are of *this quasi criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution*, and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself; and we are further of the opinion that a *compulsory production* of the private books and papers of the *owner of goods sought to be forfeited* in such a suit is compelling him to be a witness against himself, within the meaning of the Fifth Amendment to the Constitution; and is the *equivalent of search and seizure*, and an *unreasonable search and seizure, within the meaning of the Fourth Amendment.* Though the proceeding in question is divested of many of the aggravating incidents of actual search and seizure, yet,

as before said, it contains their substance and essence, and effects their substantial purpose. It *may be* that it is the *obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practice* get their first footing in that way, namely; by *silent approaches and slight deviations* from legal modes of procedure. This can only be obviated by adhering to the rule that *Constitutional provisions* for the security of person and property should be *liberally construed.*"

Lees v. *U. S.*, 150 U. S. 476, 37 L. Ed. 1150 was a civil action to recover a penalty for importing an alien, under the act of February 26, 1885, 23 Stat. at L. 332 and the forcing of the defendant to testify was held unconstitutional.

This Court through an opinion by Mr. Justice Harlan in *Hepner* vs. *213 United States*, 103 at 111, 53 L. Ed. 720 at 723 construed the *Boyd* and *Lees* cases and said concerning the *Lees* case:

> "That case was a civil action to recover a penalty for importing an alien into the United States to perform labor, in violation of the act of February 26th, 1885; 23 Stat. at L. 332, chap. 164, U. S. Comp. Stat. 1801, p. 1290. In that case the trial court compelled one of the defendants to testify for the United States and furnish evidence against himself. *This court held that that could not be done;* saying 'this *though an action civil in form, is unquestionably criminal in its nature,* and in such a case a defendant cannot be compelled to be a witness against himself,'—meaning thereby only that the action was of such a criminal nature as to prevent the use of depositions. Among the authorities cited in the *Lees* Case was *Boyd* v. *United States*, 116 U. S. 616, 634, 39 L. Ed. 746, 752, 6 Sup. Ct. Rep. 524. In the latter case it was adjudged that penalties and forfeiture incurred by the commission of offenses against the law are of such a quasi-

criminal nature that they come within the reason of criminal proceedings for the purposes of the 4th Amendment of the Constitution and of that part of the 5th Amendment declaring that no person shall be compelled in any criminal case to be a witness against himself.

So that the *Lees* and *Boyd* Cases do not modify or disturb but recognize the general rule that penalties may be recovered *by civil actions,* although such actions may be so far criminal in their nature that the defendant *cannot be compelled to testify against* himself in such actions in respect to any matters involving, or that may involve his being guilty of a criminal offense."

The 4th and 5th amendments protect against unlawful searches in libel condemnations because if there is a condemnation there can then also be criminal prosecution. Under the other sections of the Food Act in *U. S.* vs. *Dotterwich* 320 U. S. 277, 80 L. Ed. 74, the Court held that officers as well as the corporation are liable to criminal prosecution under the Food Act.

In re Andrews Tax Liability, 18 F. Supp. 804 at 807 (Md. D. C.) Judge Chestnut held the amendments were applicable in administrative proceedings where no criminal charge was pending. This case is quoted with citations in Appendix "B" page 31.

The amendments must be liberally construed to protect against prohibited searches. Also the statutes must be so construed as to preserve the constitutional rights.

Grau v. *U. S.*, 287 U. S. 124, 77 L. Ed. 212; *Sgro* v. *U. S.*, 287 U. S. 206 at 210, 77 L. Ed. 260 at 262.

The *Boyd* Case construed not only the 4th amendment but the statute in that case and it is a well recognized principle that when a statute is construed by this Court and afterwards amended that the Court's construction is read

into the amended statute and is obligatory upon the Court.

It would seem a logical conclusion that where a statute is construed by this Court and Congress later passes another act in practically the same wording and provisions although covering another subject that Congress intended for the later statute to be similarly construed and such intention is binding on the Court.

In *U. S. v. 8 packages, etc., of drugs*, 5 F. (2d) 971 District Judge Hollister in a strong opinion quoted from the *Boyd* Case holding that the 4th amendment was applicable for libels and condemnations under the Food Act.

The case cited by Judge Dobie *U. S.* vs. *935 cases, etc.*, 136 F. (2d) 523 C. C. A. 6 certiorari denied 320 U. S. 778 is not applicable to the present case. In that case it was not a question of seizure or search but whether or not there had to be an investigation and affidavit on or before the filing of the libel or condemnation and the Court held such was not required. The petition for certiorari to this Court presented only one question, namely:

> "Is a seizure pursuant to Federal Food, Drug and Cosmetic Act in violation of the 4th Amendment of the United States Constitution when the warrant of origin was made without a showing of probable cause supported by oath and affirmation?"

That is solely a question of Court procedure on the libel.

Point III

Where the trial judge sees and hears the witnesses testify, the Appellate Court is bound by the Trial Judge's finding unless there is no evidence whatever to sustain the findings.

District Judge Coleman read the affidavit and heard the witnesses testify and commended them on their frankness and he made the findings of fact in the opinion, which is

an established practice and proper and in compliance with F. R. C. P. 52; *Roberts* vs. *Calhoun Co.* 45 F. Supp. 291 (Fla.); *Klimkiewicz* vs. *W. D. & T. Co.*, 74 Apps. D. C. 333; 152 F. (2d) 957. *Knapp* vs. *Imperial, etc., Co.* 130 F. (2d) 1 (C. C. A. 4).

One reason for the rule that the Trial Court's finding is binding on an Appellate Court is that the Trial Judge not only hears the witnesses with the various tones of their voices but also sees their actions and is thus able to judge of their veracity and to get their true meaning.

This District Judge Coleman did but Appellate Judge Dobie stated "nor are we impressed by the statement of claimant's president" who was a witness, indicating that he did not believe him. This makes it clear that there was evidence to support the findings and in such a case the Appellate Court can not vacate as the question of the veracity of witnesses is left to the judgment of the Trial Judge.

Judge Coleman says he made his findings of fact "from the weight of the credible evidence", which seems to indicate that some of the testimony may not have been credible. Judge Coleman found the actions of the inspector "did in fact mislead the factory owner or operator." (R. 27.) In a case cited by Judge Dobie, *Joong Sui Noon* vs. *United States* 76 F. (2d) 249 the Court held:

> "The decision of whether the statement was voluntary was for the trial court on the conflicting evidence, and would not be here disturbed even if within the objection made to the evidence."

This ruling is sustained by the authorities and is necessary to save the Appellate Courts from having to retry on the facts practically all the cases appealed.

Point IV

(A) The courts will not permit the United States to accept the benefits of, or condone, the acts of its agents not consistent with good faith, not authorized by law, or "that smack of surprise if not actual misrepresentation," and which "did in fact mislead" and caused reasonable ground to believe that the Government's position was misrepresented by its agent.

(B) The above action of the Government's agents followed immediately by the filing of five libels in different States against a nationally known producer were so arbitrary, unreasonable and unlawful as to amount to the lack of due process of law requiring the dismissal of the five libels.

As counsel remembers, although he is unable now to find the citation the Supreme Court has stated that the United States can not do any wrong. It is in practically those words. This is based on the old principle that the Crown can do no wrong.

It is the function of the Courts to prevent the government from receiving advantage from, or condoning, such wrongful acts of its agents.

The District Court in the instant case found that the action of the Inspector "smacks of surprise if not of actual misrepresentation" "did in fact mislead the factory owner" and the Court then stated "there is reasonable ground to believe that the Government's position was misrepresented" by its agent.

In the *McNabb* case 318 U. S. 332 at 340; 87 L. Ed. — at — the Court says:

> "Implies the duty of establishing and maintaining civilized standards of procedure and evidence."

The complete quotation is found in Appendix "B" page 13.

In *U. S.* v. *Taylor*, 104 U. S. 216 at 221; 26 L. Ed. 721 at 723 the Court said:

> "A construction should be given to these statutes which would be consistent with *good faith* on the part of the *United States.*"

In *Direction Disconto-Gesill-Schaft* v. *U. S. Steel Corp.*, 267 U. S. 22 at 28, 45 Sup. Ct. 207; 69 L. Ed. 495 at 498 the Court said:

> "But it (the U. S.) prefers to consider itself civilized and to act accordingly."

Bourdeau v. *McDowell*, 256 U. S. 465 at 477, 65 L. Ed. 1148 at 1151, Mr. Justice Brandeis, dissenting with Mr. Justice Holmes had occasion to use this pregnant thought, which we respectfully submit, applies in this case:

> "Respect for the law will not be advanced by resorting in its enforcement to means which *shock a common man's sense of decency and fair play.*"

In *Shafer & Co.* v. *Farmer & Co.*, 268 U. S. 189 at 202, 45 Sup. Ct. 481; 69 L. Ed. 909 at 916 to the contention that the existing evils justified the act Mr. Justice Van Devanter said:

> "The answer is that there can be no justification for the exercise of a power that is not possessed."

In *Am. Bank & Trust Co.* v. *Federal Reserve Bank*, 256 U. S. 350, 41 Sup. Ct. 499 at 500; 65 L. Ed. 983 at 990 Mr. Justice Holmes said:

> "The policy of the Federal Reserve Bank is Governed by the policy of the United States with regard to them and to these relatively feeble competitors.

> We do not need aid from the debates upon the statute under which the reserve banks exist to assume that the United States did not intend by that statute to sanction this sort of warfare upon legitimate creations of the states."

The secretary by permitting others to do a wrong makes the United States a party to the wrongdoing under the principle announced in *Warner Co.* v. *Eli Lilly & Co.*, 265 U. S. 526, 44 Sup. Ct. 615 at 616, 68 L. Ed. 1161 at 1164; *Hostetter Co.* v. *Brueggeman-Reinert Co.*, 46 Fed. 188 at 189, and *Idaho In. Co.* v. *Gooding*, 265 U. S. 518, 45 Sup. Ct. 618 at 621; 68 L. Ed. 1157.

In *Behn Meyer Co., Ltd.* v. *Miller*, 266 U. S. 457, 45 Sup. Ct. at 168, 69 L. Ed. 374 at 387-8:

> "The contrary view, urged by appellees, would greatly qualify, perhaps delete, this subsection, and would place the United States in the unenviable position of positively refusing, after hostilities had ended, to give up property which had been taken contrary to their own laws. It would require very clear words to convince us that Congress intended any such thing."

The *Olmstead* Case (277 U. S. 438, 72 L. Ed. 944) was overruled or overcome by the act of Congress as shown in the first *Nardone* Case (302 U. S. 379, 82 L. Ed. 314 at 316).

Congress does not by overrule decisions by name like the Courts do but establishes a policy for all cases and thus overrules some former decisions.

It will be noted that the Court construed the statute in the first *Nardone* case so as to prevent methods inconsistent with ethical standards and personal liberty for the Court said at pages 383 and 316:

> "It is urged that a construction be given the section which would exclude federal agents since it is im-

probable Congress intended to hamper and impede the activities of the government in the detection and punishment of crime. The answer is that the question is one of policy. Congress may have thought it less important that some offenders should go unwhipped of justice than that officers should resort to methods deemed *inconsistent with ethical standards and destructive* of personal liberty. The same considerations may well have moved the Congress to adopt Sect. 605 as evoked the guaranty against practices and procedures violative of privacy, embodied in the Fourth and Fifth Amendments of the Constitution."

Congress in the second *Nardone* Case established a policy against wrongfully obtained date and thereby in effect overruled the *Armstead* Case and the first *Nardone* Case.

The Court carried the principle further in the second *Nardone* Case (308 U. S. 338 at 340, 84 L. Ed. 307, at 3011), where the Court said:

"Any claim for the exclusion of evidence logically relevant in criminal prosecutions is heavily handicapped. It must be justified by an over-riding public policy expressed in the Constitution *or the law of the land*. In a problem such as that before us now, two opposing concerns must be harmonized: on the one hand, the stern enforcement of the criminal law; on the other, protection of that realm of privacy left free by Constitution and laws but capable of infringement either through zeal or design. In accommodating both these concerns, meaning must be given to what Congress has written, even if not in explicit language, so as to effectuate the policy which Congress has formulated.

We are dealing with specific prohibition of particular methods in obtaining evidence. The result of the holding below is to reduce the scope of Section 605, to exclusion of the exact words heard through forbidden interceptions, allowing these interceptions every de-

rivative use that they may serve. Such a reading of Section 605 *would largely stultify the policy which compelled our decision in* Nardone v. United States, *supra*. That decision was not the product of a merely meticulous reading of technical language. *It was the translation into practicality of broad considerations of morality and public well being.* This Court found that the logically relevant proof which Congress had outlawed, it outlawed because '*inconsistent with ethical standards and destructive of personal liberty.*' 302 U. S. 379, 384; 82 L. Ed. 314, 317, 58 S. Ct. 275. To forbid the direct use of methods thus characterized but to put no curb on their full indirect use would only invite the very methods deemed '*inconsistent with ethical standards and destructive of personal liberty.*' What was said in a different context in Silverthorne Lumber Co. v. United States, 251 U. S. 385, 392, 64 L. Ed. 319, 321, 40 S. Ct. 182, 24 A. L. R. 1426, is pertinent here: 'The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all.' "

"*The civilized conduct* of criminal trials *cannot be confined within mechanical rules. It necessarily demands the authority of limited direction entrusted to the judge* presiding in federal trials, including a well established range of judicial discretion, subject to appropriate review on appeal, in ruling upon preliminary questions of fact. Such a system as ours must, within the limits here indicated, *rely on the learning, good sense, fairness and courage of federal trial judges.*"

B

In *National Remedy Co.* v. *Hyde, Secretary*, 60 Apps. D. C. 252, 254, 50 F. (2d) 1066, the Secretary of Agriculture was enjoined from making "multiple" seizures of appellant's remedy because the institution of numerous libels and seizure of plaintiffs' remedy constituted arbitrary exercise of power and deprivation of due process of

law, because under averments of plaintiff's bill the effect thereof would be to deprive plaintiff of its property through destruction of its business before issues involved could be determined by Court, and facts did not show such drastic remedy was necessary to protect public prior to determination of Court.

No appeal was filed. The Court said:

> "Inasmuch as every district attorney to whom the department makes certification must institute appropriate proceedings, by indictment or libel for condemnation, or both, it is evident that, even though the findings of the Department are merely administrative nevertheless, if such certification should be made to the district attorney in every district where a product might be found, the manufacturer would be crippled or ruined long before the final adjudication in the court could be had. Such a result, we think, was not contemplated by Congress, except possibly in unusual cases where drastic action would be necessary for the immediate protection of the public. Is this a case of that character? We think not."

Point V

The decision below is in conflict with decisions of the United States Court of Appeals for the District of Columbia as to what constitutes a voluntary consent to inspect records of the manufacturer or shipper or the waiver of its rights and privileges under the 4th and 5th Amendments.

The factory inspection section (21 U. S. C. A. 374) requires that the inspector first make request and obtain consent to make the factory inspection. Judge Dobie says this section authorizes a record inspection. If the section authorizes it, which is denied, the burden would be on the Government to prove such consent given. District Judge

Coleman held that it was not shown that such consent was given.

In the *Woods* case the Court held a plea of guilty on arraignment does not constitute a "waiver" of privilege against self-incrimination and the withdrawal of the plea of guilty on arraignment does not convert it into a waiver of the privilege. (75 U. S. Apps. D. C. 274, 287; 128 F. (2d) 265 cert. denied.)

Judge Rutledge (now of this Court) in reversing the judgment below said:

> "It is sufficient to rule that when, as here, the accused is without counsel and does not *appear clearly that he knows his rights and intends to waive them,* the 'plea' or its substantial equivalent, made without warning or advice, cannot be received in evidence against him. Any other rule would make of the hearing *a trap* and inquisition, *with consequences for the accused and for the judicial system not tolerable under the Constitution.*"
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> * * * * * * *
>
> "Large in this is a sense of fairness to the person accused, a respect for his individual integrity in accusation or even in guilt. But larger still in the sense of the Court's own part in justice and its administration. By this we mean the sense of the citizen as well as of the Court itself. It *cannot be partner or partisan with the prosecutor,* subtly or otherwise and *retain the confidence of the accused and the public or its own self-respect.*"

In *Nueslein* v. *D. C.*, 73 Apps. D. C. 85 at 87, 115 F. (2d) 690, where officers investigating an automobile collision, finding the door of the defendant's residence open, walked in and went up stairs and found the defendant in the bathroom. When they ask him if he had been in an automobile accident he voluntarily admitted he had. The officers, believing that he had been drinking—he had drunk

a bottle of beer—arrested him on the charge of driving while under the influence of liquor. Judge Groner in holding that Nueslein's admissions were not voluntary and admissible in evidence said:

> "He may never have heard of the 4th Amendment. Undoubtedly, he had even less of an idea as to the method that would insure its continuing protection. He was *not* a bootlegger or a gambler schooled in resistance to law. *He probably had the average layman's respect for the common symbol of the law, officers in uniform. It is for the courts to protect such men's constitutional rights, not for the courts* to study the *finesse* by *which persons preserve their protection.* On this record we cannot say that the defendant *waived the infringement* of the 4th Amendment rights."

The Court said at page 87:

> "A confession does not make good a search illegal at its inception, since an illegal search cannot be legalized by what it brings to light, and such rule should not be narrowed even though an admission or confession is obtained before a court will hold a defendant has waived his protection under Fourth Amendment, *there must be convincing evidence to that effect.*"

> "When two interests conflict, one must prevail. To us the interest of *privacy safeguarded* by the amendment is more important than the interest of *punishing* of those *guilty* of misdemeanors."

There is a fuller quotation from this decision in Appendix "B" page 39. Judge Biddle, now Attorney General, in *Zimmerman* v. *Wilson,* 105 F. (2d) 283 at 285 (C. C. A. 3) said:

> "Agents may not 'under official pretex officiously extend their powers beyond those provided by the law.'

* * * * * * *

Newfield v. *Ryan*, 5 Cir. 91 F. (2d) 700, 703 certiorari 302 U. S. 729, 58 Sp. Ct. 54; 82 L. Ed. 560."

Conclusion

The questions here involved are not merely of interes to the petitioners but rather of great general importanc to all producers and distributors of food products, drug and cosmetics.

It is respectfully submitted therefore that there is he presented a proper occasion for the exercise of the supe visory power of this Court.

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March 24, 1945.